



UNLOCKING THE SECRETS OF FLRA REPRESENTATION CASES

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What Drives Petitions

- ◆ Organize unrepresented employees
- ◆ Replace incumbent with another union
- ◆ Eliminate union
- ◆ Question continued majority status
- ◆ Reorganization
- ◆ Reshape Bargaining Relationship
- ◆ Clarify Unit



Why “R” cases are Important

- ◆ Determine Exclusive Representative
- ◆ Determine Statutory Rights of Parties
- ◆ Determine Nature and Level of Recognition
- ◆ Once Established, Unit is hard to Change



FLRA Processing of “R” Cases

- ◆ FLRA Involvement Triggered by Petition
- ◆ Regional Office Responsible for Investigation and Decision
- ◆ R cases reviewed by FLRA members
- ◆ No court review in R cases
- ◆ Government Must Remain Neutral



Timeliness of Petitions

- ◆ Election Bar-1yr
- ◆ Certification Bar-1year
- ◆ Contract Bar-3 years

Must contain substantial terms and effective date
and duration

Unusual Circumstances-reorganization, severance



What duty do I have?

- ◆ All parties are expected to cooperate in **EVERY** aspect of the representation process. This includes the obligation to:
 - a. Cooperate fully with the Regional Director
 - b. Submit all required and requested information
 - c. Participate in pre-hearing/pre-election conferences and hearings



What happens if I fail to cooperate?

- ◆ The Regional Director may take appropriate action, including:
 - a. Dismissal of petition
 - b. Denial of intervention
 - c. Denial of status as a party
 - c. Acceptance of other information available on the point
 - d. Direction of an Election
 - e. Issuance of an investigative subpoena



Types of FLRA Representation Cases – Petitions to:

- ◆ Request an election* (RO/DR/RA)
- ◆ Clarify and/or amend*(CU/AC)
- ◆ Consolidate (UC)
- ◆ To grant national consultation rights or consultation rights
- ◆ Raise claims pursuant to 5 U.S.C. 7111(f)(1)
- ◆ Combine any of the above [Multiple-Purpose Petition] (RA)
- ◆ Dues Allotment (DA)



Types of Election Petitions

- ◆ To determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative
- ◆ To determine eligibility for dues allotment, in an appropriate unit without an exclusive representative
- ◆ To determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative



Election petitions are important because they determine whether or not the employees will be represented



Keys to election petitions:

- ◆ Agency has the duty to provide a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit
- ◆ The list of employees who are eligible to vote MAY NOT be posted in any manner
- ◆ Agency has duty to provide names and most recent HOME addresses for mail ballot elections
- ◆ Non-observer party representatives ARE NOT ALLOWED in the polling area while the polls are open



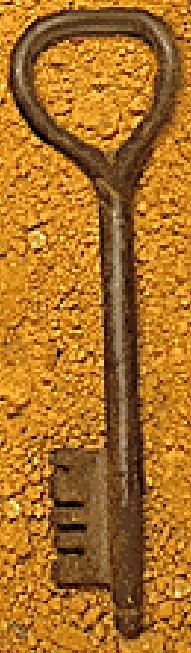
The Regional Director will issue an appropriate certification after an election.

- ◆ Certification of Representative
- ◆ Certification of Results
- ◆ Certification for Inclusion in Existing Unit
- ◆ Certification of Consolidation of Existing Units



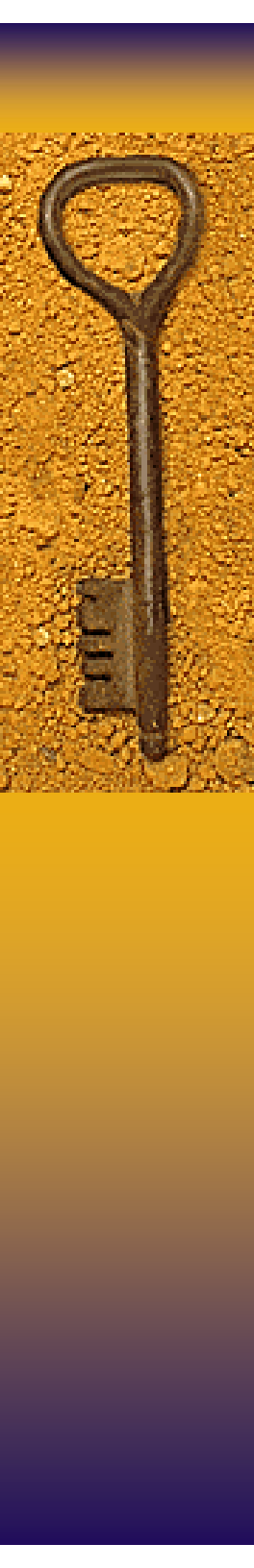
Petitions to clarify/amend
resolve any questions
regarding who is in/out of the
bargaining unit(s).

Eligibility questions, Montrose,
Accretions, Technical changes



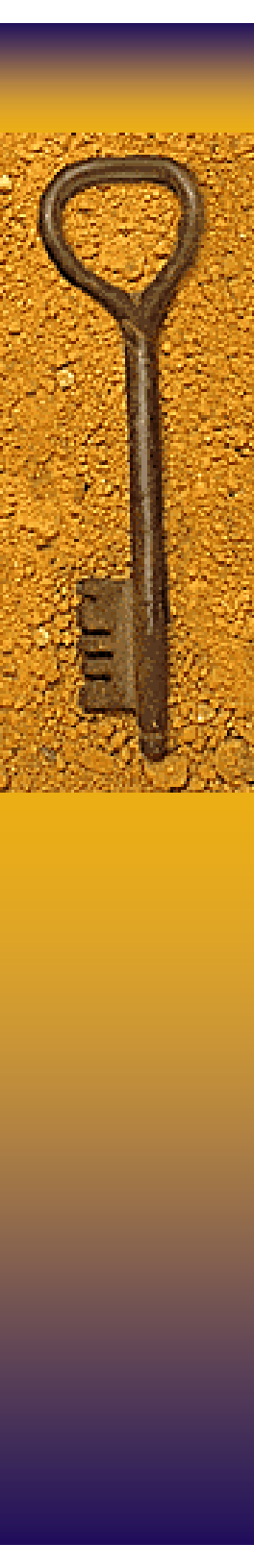
What happens when there is a reorganization?

- ◆ A petition to clarify is filed (by Union, Agency, or both)
- ◆ The Region makes a determination regarding the bargaining unit(s)
- ◆ Remember -- Statute talks of an appropriate unit
 - Statute does not require THE MOST or ONLY appropriate unit
 - An organization may have many appropriate units



What happens to my bargaining obligations in the meantime?

- While the petitions are being processed, parties are obligated to:
 - continue to recognize the existing union
 - adhere to terms of existing contracts
 - fulfill all representational and bargaining responsibilities



Management –Neutral (Section 7102 –employee protected Rights)

◆ What can a Manager Do:

- Inform employee about petition
- Encourage employees to vote
- Rebut false statements or facts
- Enforce all work rules
- Prohibit union activity during work, except in non-work time
- Refer employees to HR, FLRA or union
- Get advise from HR before any action
- Learn access rules for non-employees



What are “Don’ts” for Managers

- ◆ Do not coerce or influence to think or vote in a particular way
- ◆ Do not express whether a union is good or bad
- ◆ Do not answer questions about the union
- ◆ Do not stop union activity during non-work hours in non-work areas
- ◆ Do not unilaterally change work conditions
- ◆ Do not sponsor, control or assist union



Case specifics:

- ◆ EVERY representation petition is different; therefore, the outcomes vary.
- ◆ If you have a specific question about the petition, ask the FLRA Agent who is assigned to the case – do not rely on past scenarios and do not assume anything.
- ◆ The way that the Agency handles a representation petition potentially sets the stage for the entire bargaining relationship.



Effect of a Reorganization

- ◆ In Morale, Welfare, and Recreation Directorate, 45 FLRA 281 (1992) the FLRA set forth 5 issues that may result from a reorganization:
- ◆ The existing unit remains appropriate.
- ◆ A unit is accreted to another existing unit.
- ◆ Units are combined to form a new unit.
- ◆ A gaining entity may be a Successor
- ◆ The unit is no longer appropriate



What is an appropriate Unit?

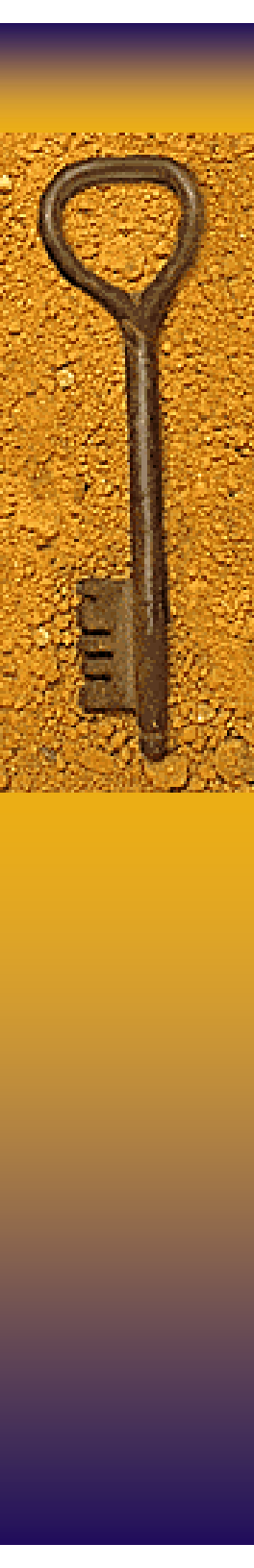
◆ Criteria Established-5 U.S.C.7112(a):

1. Employees share a community of Interest
2. Unit promotes Effective dealings with
the Operations of the Agency
3. Unit promotes Efficiency of Operations
of the Agency involved



Community of Interest Factors

- ◆ Are employees part of the same component
- ◆ Do employees support the same mission
- ◆ Do employees have same chain of command (common supervision)
- ◆ Do employees have related duties
- ◆ Do employees share same working conditions (hours, pay system, uniforms)
- ◆ Are employees governed by same personnel and labor relations policies administered by the same personnel office.



Effective Dealings –pertains to relationship of parties

Factors to Consider

The past collective bargaining experience

The locus and scope of the personnel office

The level at which labor relations policy is set

Does unit mesh with Agency organization



Efficiency of Operations-pertains to structure Unit and Agency

- ◆ Effect of the proposed unit on agency

Cost, productivity, and use of resources

- 7 FLRA 626 (1982)

Level of LMR policy and Personnel policy

Chain of command, supervisory hierarchy,
performance process, common payroll,
fragmentation

Convenience in negotiating CBA



Successorship standard-3 part Test Port Huenenme 50 FLRA 363

- 1.) The transferred employees are in an appropriate unit and they constitute a majority of the post-transfer unit.
- 2.) The transferred employees have similar mission, duties and working conditions
- 3.) Necessity for an Election




Criteria one-Appropriateness

An entire unit (or portion) is transferred

The transferred are in appropriate units

The transferred employees constitute a majority of the post-transfer unit.



Criteria two-Continuity

- ◆ The gaining entity and employees have a similar mission and job duties and functions under similar working conditions after the transfer.
- ◆ The emphasis is on the employee's perspective as to whether the employers operations remain essentially the same after the transfer. See *Fall River*, 482 U.S. 27 (1987)



Criteria 3-Necessity for Election

- ◆ No election necessary if transferred employees are a majority of new unit
- ◆ Election necessary when 2 or more unions represent employees transferred to a unit.
- ◆ Election not necessary if one union is sufficiently predominate (70%) of the employees in new unit.



Competing claims of Successorship

- ◆ If successorship and accretion are claimed, the successorship claims is resolved prior to accretion because successorship permits a union to retain its status rather than altering the relationship between the employees and their chosen representative. FISC, Norfolk, 52, FLRA 950. If there is no successorship, the FLRA will proceed to accretion claim.



Accretion-No election Necessary if resulting unit is appropriate.

- ◆ Accretion involves the addition, without an election, of employees to an existing unit.
- ◆ Employees who fit unit description may be automatically included.
- ◆ Employees who are functionally and administratively integrated may accrete
- ◆ No accretion if acquired employees numerically overshadow employees in unit



What to do if Petition is filed.

- ◆ Pre-petition meeting with unions involved
- ◆ Copy of all certifications and contracts
- ◆ Copy of general orders for realignment
- ◆ Alpha lists of included and excluded employees for each proposed unit
- ◆ Negotiate interim agreement
- ◆ Maintain CBA and status quo and fulfill all bargaining obligations with incumbent unions-See 5 CFR 2422.34(a)



Prepare for Hearing

- ◆ Rep. Hearings are not adversarial
- ◆ Hearing must be held if QCR exists
- ◆ Union gets official time if witness necessary
- ◆ Prepare stipulation and joint exhibits
- ◆ Prepare Agency exhibits-org. charts/orders
- ◆ Respond to information requests
- ◆ Transcript will be made and briefs filed



Scope of Unit

- ◆ Size and Functional grouping
- ◆ Single Field Office
- ◆ District Office
- ◆ One Activity
- ◆ One department
- ◆ Function group
- ◆ Residual Units
- ◆ Add-on to Existing Unit.
- ◆ Expanding and Contracting Units



Unit Exclusions

- ◆ National Security
- ◆ Internal Audit
- ◆ Professional employees
- ◆ Supervisors and management officials
- ◆ Personnelists
- ◆ Confidential employees
- ◆ Temporary employees



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